

§ 10.206 Value content requirement.

(a) *General.* An article may be eligible for duty-free treatment under the ATPA only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct costs of processing operations performed in a beneficiary country or countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(b) *Commonwealth of Puerto Rico, U.S. Virgin Islands and CBI beneficiary countries.* For purposes of determining the percentage referred to in paragraph (a) of this section, the term “beneficiary country” includes the Commonwealth of Puerto Rico, the U.S. Virgin Islands, and any CBI beneficiary country as defined in § 10.191(b)(1) of this part. Any cost or value of materials or direct costs of processing operations attributable to the Virgin Islands or any CBI beneficiary country must be included in the article prior to its final exportation to the United States from a beneficiary country as defined in § 10.202(a).

(c) *Materials produced in the United States.* For purposes of determining the percentage referred to in paragraph (a) of this section, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States (other than the Commonwealth of Puerto Rico). The principles set forth in paragraph (d)(1) of this section shall apply in determining whether a material is “produced in the customs territory of the United States” for purposes of this paragraph.

(d) *Cost or value of materials—(1) “Materials produced in a beneficiary country or countries” defined.* For purposes of paragraph (a) of this section, the words *materials produced in a beneficiary country or countries* refer to those materials incorporated in an article which are either:

- (i) Wholly the growth, product, or manufacture of a beneficiary country or two or more beneficiary countries; or
- (ii) Substantially transformed in any beneficiary country or two or more beneficiary countries into a new or dif-

ferent article of commerce which is then used in any beneficiary country as defined in § 10.202(a) in the production or manufacture of a new or different article which is imported directly into the United States. For purposes of this paragraph (d)(1)(ii), no material shall be considered to be substantially transformed into a new or different article of commerce by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations, or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. The examples set forth in § 10.196(a) of this part, and the principles and examples set forth in § 10.195(a)(2) of this part, shall apply for purposes of the corresponding context under paragraph (d)(1) of this section.

(2) *Questionable origin.* When the origin of a material either is not ascertainable or is not satisfactorily demonstrated to the appropriate port director, the material shall not be considered to have been grown, produced, or manufactured in a beneficiary country or in the customs territory of the United States.

(3) *Determination of cost or value of materials.* (i) The cost or value of materials produced in a beneficiary country or countries or in the customs territory of the United States includes:

- (A) The manufacturer’s actual cost for the materials;
- (B) When not included in the manufacturer’s actual cost for the materials, the freight, insurance, packing, and all other costs incurred in transporting the materials to the manufacturer’s plant;
- (C) The actual cost of waste or spoilage, less the value of recoverable scrap; and
- (D) Taxes and/or duties imposed on the materials by any beneficiary country or by the United States, provided they are not remitted upon exportation.

(ii) Where a material is provided to the manufacturer without charge, or at less than fair market value, its cost or value shall be determined by computing the sum of:

- (A) All expenses incurred in the growth, production, or manufacture of

the material, including general expenses;

(B) An amount for profit; and

(C) Freight, insurance, packing, and all other costs incurred in transporting the material to the manufacturer's plant.

(iii) If the pertinent information needed to compute the cost or value of a material is not available, the appraising officer may ascertain or estimate the value thereof using all reasonable ways and means at his disposal.

(e) *Direct costs of processing operations*—(1) *Items included.* For purposes of paragraph (a) of this section, the words *direct costs of processing operations* mean those costs either directly incurred in, or which can be reasonably allocated to, the growth, production, manufacture, or assembly of the specific merchandise under consideration. Such costs include, but are not limited to the following, to the extent that they are includable in the appraised value of the imported merchandise:

(i) All actual labor costs involved in the growth, production, manufacture, or assembly of the specific merchandise, including fringe benefits, on-the-job training, and the cost of engineering, supervisory, quality control, and similar personnel;

(ii) Dies, molds, tooling, and depreciation on machinery and equipment which are allocable to the specific merchandise;

(iii) Research, development, design, engineering, and blueprint costs insofar as they are allocable to the specific merchandise; and

(iv) Costs of inspecting and testing the specific merchandise.

(2) *Items not included.* For purposes of paragraph (a) of this section, the words “direct costs of processing operations” do not include items which are not directly attributable to the merchandise under consideration or are not costs of manufacturing the product. These include, but are not limited to:

(i) Profit; and

(ii) General expenses of doing business which either are not allocable to the specific merchandise or are not related to the growth, production, manufacture, or assembly of the merchandise, such as administrative salaries,

casualty and liability insurance, advertising, and salesmen's salaries, commissions, or expenses.

(f) *Articles wholly the growth, product, or manufacture of a beneficiary country.* Any article which is wholly the growth, product, or manufacture of a beneficiary country as defined in §10.202(a), and any article produced or manufactured in a beneficiary country as defined in §10.202(a) exclusively from materials which are wholly the growth, product, or manufacture of a beneficiary country or countries, shall normally be presumed to meet the requirement set forth in paragraph (a) of this section.

§ 10.207 Procedures for filing duty-free treatment claim and submitting supporting documentation.

(a) *Filing claim for duty-free treatment.* Except as provided in paragraph (c) of this section, a claim for duty-free treatment under the ATPA may be made at the time of filing the entry summary by placing the symbol “J” as a prefix to the Harmonized Tariff Schedule of the United States subheading number applicable to each article for which duty-free treatment is claimed on that document.

(b) *Shipments covered by a formal entry*—(1) *Articles not wholly the growth, product, or manufacture of a beneficiary country*—(i) *Declaration.* In a case involving an article covered by a formal entry for which duty-free treatment is claimed under the ATPA and which is not wholly the growth, product, or manufacture of a single beneficiary country as defined in §10.202(a), the exporter or other appropriate party having knowledge of the relevant facts in the beneficiary country as defined in §10.202(a) where the article was produced or last processed shall be prepared to submit directly to the port director, upon request, a declaration setting forth all pertinent detailed information concerning the production or manufacture of the article. When requested by the port director, the declaration shall be prepared in substantially the following form: